Filed 4/2/19 In re J.B. CA2/1

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| In re J.B., a Person Coming Under the Juvenile Court Law. | B291208<br>(Los Angeles County Super. Ct. No. 18CCJP02942A) |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br>Plaintiff and Respondent.<br>v.<br>A.N.,<br>Defendant and Appellant;<br>J.B.,<br>Appellant, | |

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Reversed in part.

Karen J. Dodd, under appointment by the Court of Appeal, for Appellant J.B., a Minor.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant A.N.

No appearance for Plaintiff and Respondent.

Appellant J.B., the subject of the dependency proceedings below, challenges the juvenile court's finding that A.N., with whom J.B.'s natural mother lived at the time of J.B.'s conception and birth, is J.B.'s "presumed [father]" for the purposes of her dependency proceedings. J.B. contends that the juvenile court erred by basing its finding solely on A.N.'s JV-505 "statement regarding parentage," and that the record does not support a finding that A.N. is J.B.'s presumed father in any event. A.N. contends that he is entitled to presumed father status because, as stated in his JV-505 form, he received newborn J.B. into his home for two days and held her out as his child. He argues this qualifies him for "presumed [father]" status under Family Code section 7611, subdivision (d).[1] We disagree.

Whether a man meets these requirements depends on whether he has shown a "fully developed" parental relationship with the child.[2] (*In re L.L.* (2017) 13 Cal.App.5th 1302, 1310 (*In re L.L.*).) A court may consider JV-505 statements along with all other relevant evidence in assessing whether such a parental relationship exists. Here, however, neither A.N.'s JV-505 statements, nor the record as a whole—even when viewed in the

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[1] Unless otherwise indicated, all statutory references are to the Family Code.

[2] A.N. does not argue that he is entitled to presumed father status on the limited non-statutory grounds some courts have recognized. (See, e.g., *In re D.M.* (2012) 210 Cal.App.4th 541, 552, quoting *In re Jerry P.* (2002) 95 Cal.App.4th 793, 816 [presumed fatherhood status may be appropriate "under principles of due process and equal protection" where father has " 'demonstrated [his] commitment to parental responsibility' " but was prevented from receiving the child into his home based "solely by the acts of others over whom he had no control"].) In any event, such circumstances are not present here. (See generally, Factual and Procedural Background, *post*, at p. 3.)

light most favorable to the lower court's finding—reflect substantial evidence of an established parent-child relationship warranting presumed father status.

Accordingly, we reverse.

## FACTUAL AND PROCEDURAL BACKGROUND

Appellant J.B. was born on May 4, 2018 to Crystal B. (the mother). The identity of J.B.'s biological father is unknown.[3] The mother has three other children no longer in her custody as a result of dependency proceedings in Washington state.

The mother lived with respondent A.N. in his home beginning in approximately July 2018, 10 months before J.B. was born. For several weeks between March and April 2018, however, the mother was in Spokane, Washington visiting one of her older children. She returned to A.N.'s home three weeks before J.B.'s birth. A.N. was not aware that the mother had gone out of town.

### A. *J.B.'s Birth and A.N.'s Initial Interaction with DCFS*

A.N. was not present for J.B.'s birth, but came to see the mother and J.B. at the hospital the day J.B. was born. Due to the mother testing positive for methamphetamines, the hospital referred J.B. to the Department of Children and Family Services (DCFS). In connection with this, a social worker interviewed A.N. when he arrived at the hospital. During that interview, A.N. stated he was "not 100 percent sure" J.B. was his child, but that he had told the mother, "[I]f it is my baby, we will be together." He further told the social worker that he might later seek a paternity test, but that at the time he was "cool with everything right now as

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[3] The court ordered DNA paternity testing of A.N., but as of the date of the record on appeal, he had not submitted to such testing.

the father" and would consider himself J.B.'s father. He claimed to have been saving money to purchase essential items for J.B. A.N. stated he was aware of the mother's history of drug abuse, but denied ever seeing the mother use illicit substances at any point while pregnant.

A.N. stated he was willing to care for J.B. even if the mother could not reside with them, but initially refused to provide the names or contact information of family and friends who might help him with the child. Eventually, he stated his adult daughter, A.B., would assist him, though he had not yet discussed with her whether she would move in with him to do so.

No one at the hospital asked A.N. to sign J.B.'s birth certificate, nor did he inquire about placing his name on it. Upon the mother's release from the hospital, she did not return to A.N.'s home. In light of the mother's ultimate admission that she had repeatedly used drugs during her pregnancy, DCFS did not permit the mother to take custody of J.B.

### B. *DCFS Initially Releases J.B. into A.N.'s Custody*

On May 7, 2018—three days after J.B.'s birth—A.N. informed DCFS he had purchased the necessary items to care for J.B. He also confirmed he was confident in his ability to care for the child, but again refused to provide the names of friends or family besides A.B. who would support him.

Later that day, a social worker conducted a home assessment of A.N.'s residence. The social worker reported that there was "a stroller, a car seat, baby formula, water, diapers, and wipes available" in the room that appeared to serve as A.N.'s bedroom, as well as a portable crib, all of which A.N. stated was for J.B. Although the social worker noted various issues with the residence, such as that the home had no running water and was cluttered, there were "no visible safety hazards."

The social worker contacted A.B. via phone during the assessment. A.B. confirmed she was willing to help care for J.B., and that she would travel back and forth between A.N.'s home in Los Angeles and her residence in Long Beach to do so. A.N. also signed a voluntary "safety plan" agreement to assure J.B.'s safety while in his care, which, among other things, permitted DCFS to conduct unannounced visits of A.N.'s home.

Later that same day, DCFS placed J.B. in A.N.'s custody.

### C. *DCFS Seeks to Detain J.B. from A.N. After Two Days*

In the 48 hours that followed, DCFS personnel encountered difficulties contacting A.N. and were unable to access his home for safety checks pursuant to the safety plan. In addition, during an attempt to conduct such a safety check at A.N.'s residence, DCFS encountered two unidentified women who were "disheveled and appeared to have unresolved mental health [issues] and or substance abuse as evidenced by the women being hostile and making statements that did not make sense." A.N. had previously told DCFS he lived alone. These developments "cause[d] [DCFS] to have grave safety concern for the child" and to believe A.N. was not being forthright regarding his living situation and plan for caring for J.B.

In a May 9, 2018 last minute information to the court, DCFS changed its initial recommendation and suggested the court detain J.B. from both the mother and A.N.

### D. *The Court Orders J.B. Detained from A.N.*

At the May 9, 2018 detention hearing, A.N.'s counsel disputed the basis for DCFS's changed recommendation and further requested the court find A.N. to be J.B.'s presumed father. At the hearing, A.N. submitted the required JV-505 "statement regarding parentage." (See Cal. Rules of Court, rule 5.635(e)(1) [where there is no prior determination of paternity, "[a]ny alleged father and his counsel must complete and submit [a form JV-505]"].) It was not signed under penalty of perjury, nor required to be. A JV-505 form allows a man to request a judgment of parentage, state that he believes he is not the biological father of a child, or state that he believes he is the biological father, and request DNA testing. (See *In re H.R.* (2016) 245 Cal.App.4th 1277, 1284.) In his JV-505, A.N. selected as applicable the following form language: "I believe I am the child's parent and request that the court enter a judgment of parentage," and "[I] request that the court find that I am the presumed parent of the child." A.N. further indicated on the form that his request for presumed father status was based on the child living with him "from 5/7/18 to present [May 9, 2018]," that he told "[f]amily, friends, etc." that the child was his, that he had "participated in the following activities with the child . . . [b]irth [and] med[ical] app[ointments]," and "ha[d] purchased $1,000 worth of baby items for the care of his child." Also on May 9th, the mother executed a "parentage questionnaire" form, in which she indicated, by selecting certain form language and signing under penalty of perjury, that she believed A.N. to be J.B.'s father, that he had held himself out as J.B.'s father and had received J.B. into his home.

The court ordered J.B. detained from both patents, ordered a DNA paternity test, and held the issue of parentage in abeyance pending the results of that test. The court ordered reunification

services and monitored visits "at least 3x per week" for both the mother and A.N. (Capitalization omitted.)

### E. *A.N. Ignores DCFS Instructions and Brings J.B. to a Local Hospital*

DCFS immediately contacted A.B., who was caring for J.B. during the hearing, informed her of the court's ruling, and instructed her to bring J.B. to a particular DCFS office. A.B. failed to do so. Instead, that evening, A.N. left J.B. at Centinela Hospital, informing the nurses there that he was doing so in light of the court's order. DCFS learned this through the nursing staff; neither A.N. nor A.B. informed DCFS of J.B.'s whereabouts. J.B. was ultimately placed in foster care the next day.

### F. *The Court Finds A.N. Is J.B.'s Presumed Father*

Neither parent was present at the July 9, 2018 jurisdiction/disposition hearing. DCFS reported it had attempted to contact A.N. several times since the May 9 hearing, both via telephone and at his residence, without success.

A.N.'s counsel argued for the return of J.B. to A.N.'s custody, stating that A.N. recognized he should have cooperated with DCFS following the detention hearing, but that he was upset and distraught "given what he felt was [DCFS's] underhanded behavior first releasing the child to him and then detaining."

As to the issue of parentage, A.N.'s counsel reiterated A.N.'s initial desire to claim responsibility for J.B. and the efforts he made to that end. As of the date of the hearing, A.N. had not submitted to the court-ordered paternity testing, nor does the record reflect that he did so at any time thereafter.

The court found A.N. to be J.B.'s presumed father. The sole basis the court identified for this ruling is as follows: "Since I have a JV-505 the court is—excuse me. Just a moment. Court is going to declare him to be the presumed father."

The court also ordered that J.B. remain detained from A.N., however, finding that "return would be premature," because A.N. "ha[d] not provided [any] confidence to the court that he would work with [DCFS]" and "refuse[d] to take any responsibility for the fact that he should have known or knew about the mother's drug issues." The court sustained the petition as to A.N. and the mother, and ordered reunification services and monitored visits for A.N. only.

As of July 9, 2018 (the date of the most recent information to the court contained in the record), A.N. had not attempted to arrange any visits with J.B.

### G. *J.B. and A.N.'s Respective Appeals*

J.B. and A.N. each filed a timely notice of appeal; A.N. of the July 9, 2018 detention order, and J.B. of the court's finding and order regarding A.N.'s presumed father status.

As to A.N.'s appeal, we received a no merit brief from A.N.'s counsel pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, and A.N. did not personally file a brief in support of his appeal. We therefore dismiss A.N.'s appeal in a concurrently-filed order.

Through counsel, the parties have fully briefed J.B.'s appeal, which we consider below.

## DISCUSSION

J.B. contends that the court applied the incorrect analysis in finding A.N. is J.B.'s presumed father, because it relied solely on A.N.'s JV-505 statement of parentage, and that the record does not support the court's finding in any event. For the reasons set forth below, we agree.

### A. *Standard of Review*

We review the sufficiency of the record to support the lower court's finding for substantial evidence. (*In re Cheyenne B.* (2012) 203 Cal.App.4th 1361, 1371.) In so doing, we view the evidence in the light most favorable to the ruling, giving it the benefit of every reasonable inference and resolving all conflicts in support of the judgment. (*R.M. v. T.A.* (2015) 233 Cal.App.4th 760, 780 (*R.M.*).)

### B. *Law Regarding Presumed Father Status*

The child dependency statutes distinguish between "biological," " 'presumed,' " and "alleged" fathers, affording different rights to each in dependency proceedings. (See *In re Zacharia D.* (1993) 6 Cal.4th 435, 449–450.) An "alleged father" "may be the father of a dependent child . . . [but] has not yet been established to be the child's natural or presumed father." (*In re A.A.* (2003) 114 Cal.App.4th 771, 779.) A biological father is one " 'who is related to the child by blood,' " and thus attains this status based solely on his biological connection with the child. (*In re E.T.* (2013) 217 Cal.App.4th 426, 438, citing Welf. & Inst. Code, § 361.3, subd. (c)(2).) In stark contrast, a man attains "presumed father" status by having an "established relationship with and demonstrated commitment to the child," regardless of blood relation. (*In re M.R.* (2017) 7 Cal.App.5th 886, 898; see *In re Jerry P.*, *supra,* 95 Cal.App.4th at pp. 801–802 ["Presumed fatherhood, for purposes of dependency proceedings, denotes one

who 'promptly comes forward and demonstrates a full commitment to his paternal responsibilities—emotional, financial, and otherwise.' "].) Thus, a natural father can be a presumed father, but is not necessarily one; and a presumed father can be a natural father, but is not necessarily one. (*In re Jerry P.*, *supra*, 95 Cal.App.4th at p. 801.) Only presumed fathers are entitled to seek custody and receive reunification services. (*In re Zacharia D., supra,* 6 Cal.4th at p. 450.)

"To identify fathers who, by reason of their parenting relationship, are entitled to [presumed father status], the Legislature borrowed the categories" listed in section 7611. (*In re Jerry P.*, *supra*, 95 Cal.App.4th at p. 802; see § 7611.) For example, a man has "presumed [father]" status in dependency proceedings involving a child born during the man's marriage to the child's natural mother. (§ 7611, subd. (a).) A man may also obtain presumed father status under section 7611, subdivision (d), if he "receives the child into his . . . home and openly holds out the child as his . . . natural child." (§ 7611, subd. (d).) The categories set forth in section 7611 derive from the " 'strong social policy' " in favor of " ' " 'preserving and protecting the developed parent-child . . . relationships which give young children social and emotional strength and stability.' " ' " (*In re Nicholas H.* (2002) 28 Cal.4th 56, 65–66; *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 121–122 [" '[parentage] presumptions are driven . . . by the state's interest in the welfare of the child and the integrity of the family.' "].) "[P]resumed father" is thus "a term of convenience used to identify a preferred class of fathers by reference to the familial bonds described in section 7611[,] which the Legislature has determined reasonably approximates the class of fathers it wishes to benefit." (*In re Jerry P., supra*, 95 Cal.App.4th at p. 805.)

A man seeking presumed father status under section 7611, subdivision (d) bears the burden of establishing, by a preponderance of the evidence, that he has received the child into his home and openly held the child out as his own. (See *In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1653.) In determining whether a man has met this burden, "the court may consider a wide variety of factors" (*R.M., supra*, 233 Cal.App.4th at p. 774), all of which bear on the extent to which the man " ' "has lived with [the] child, treating it as his son or daughter, [and] has developed a relationship with the child that should not be lightly dissolved." ' " (*Susan H. v. Jack S.* (1994) 30 Cal.App.4th 1435, 1443, quoting *Estate of Cornelious* (1984) 35 Cal.3d 461, 464.) These factors include "the [man]'s provision of physical and/or financial support for the child, efforts to place the person's name on the birth certificate, efforts to seek legal custody, . . . the breadth and unequivocal nature of the person's acknowledgement of the child as his or her own" (*R.M., supra*, 233 Cal.App.4th at p. 774), "whether the man actively helped the mother in prenatal care," "whether and how long he cared for the child," "the number of people to whom he had acknowledged the child," and "whether he provided for the child after it no longer resided with him." (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1211.) No single factor is dispositive; "rather, the court may consider all the circumstances." (*R.M., supra*, 233 Cal.App.4th at p. 774.) Thus, a juvenile court may consider statements a man makes in a JV-505 "statement regarding parentage"—which, given the nature of the form, are likely to speak to several of the above-listed issues—as part of a multi-factor analysis regarding presumed father status. (See *ibid.*; see also Cal. Rules of Court, rule 5.635(e)(3) [court may base a determination of presumed parentage on "testimony, declarations, or statements of the alleged parents"].)

### C. *Sufficiency of Evidence to Support Presumed Father Status*

The transcript of the July 9, 2018 hearing suggests the court found A.N. to be the presumed father solely because of the statements he made in his JV-505 form regarding J.B. living in his home for approximately two days, his holding J.B. out to "[f]amily, friends, etc." as his daughter, his involvement in the mother's prenatal care, and the supplies he purchased to care for J.B. Regardless of the court's stated basis for its finding, we must affirm if any part of the record provides substantial evidence to support the statutory requirements of section 7611, subdivision (d). (*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc./Obayashi Corp*. (2003) 111 Cal.App.4th 1328, 1340 ["Consequently, if correct on any theory of applicable law, the challenged ruling must be affirmed."].) We conclude it does not.

Even viewing the evidence regarding A.N.'s interaction with J.B. in the light most favorable to the finding, the record establishes only that J.B. lived with A.N. as a newborn for less than two days, and that A.N. purchased supplies for her care.[4] But "[a] child's physical presence within the alleged father's home is, by itself, insufficient under section 7611, subdivision (d)" to constitute "receipt of the child into [the man's] home" (*W.S. v. S.T.* (2018) 20 Cal.App.5th 132, 145) and even "a caretaking role and romantic involvement with the mother is insufficient to establish presumed fatherhood." (*R.M., supra*, 233 Cal.App.4th at pp. 776-777.) Instead, the record must reflect substantial

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[4] While there is evidence in the record to suggest J.B. may actually have resided with A.B. at her home, and that A.B. may have been the primary caregiver, in reviewing for substantial evidence, we must consider the evidence in the light most favorable to the judgment.

evidence of an "established" and "fully developed parental relationship." (*In re L.L., supra,* 13 Cal.App.5th at p. 1310; *R.M., supra*, 233 Cal.App.4th at p. 781.) Here, it does not.[5]

Nor does the record contain substantial evidence reflecting a "commitment to [J.B.]" of the type presumed father status seeks to protect. (*In re M.R.*, *supra*, 7 Cal.App.5th at p. 898.) For example, A.N. claims to have been involved in the mother's prenatal care, but was unaware that she was out of the state for several weeks late in that pregnancy, and was not present at J.B.'s birth. He claims to have told friends and family that J.B. is his child, but has identified no specific individuals, and did not seek to have his name included on J.B.'s birth certificate. And although A.N. has repeatedly expressed a desire to take on a paternal role and made initial efforts to that end, his actions after losing custody of J.B. belie such a desire. Namely, despite the court affording him visitation rights, the record does not reflect that he has made any attempt to maintain a relationship with J.B. or even inquire about

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[5] A.N. cites *In re L.L.* for the proposition that an "existing relationship" is not an "implied requirement" in addition to the explicit section 7611, subdivision (d) statutory requirements for presumed father status. His reliance on this case is misplaced in two respects. First, *In re L.L.* addresses whether a man who had previously obtained presumed father status could *lose* that status by failing to visit and maintain his relationship with the child. (See *In re L.L., supra*, 13 Cal.App.5th at pp. 1307-1309 & 1310-1312, 1322 [a biological father's absence from his child's life during a period after meeting the presumed parent criteria did not deprive him of presumed parent status].) Here, by contrast, there is nothing to indicate A.N. ever established a parental bond with J.B. to begin with. Moreover, as discussed above, courts have consistently identified the extent of a relationship between man and child as the driving factor in determining whether a man has met the section 7611, subdivision (d) requirement that he "receive the child into his home."

her well-being. (Cf. *In re Jerry P., supra*, 95 Cal.App.4th at p. 806 [presumed father status warranted where man "visited and held [the child] daily in the hospital," "spent months looking for [the child]" when child was taken from hospital without man's knowledge and, after finding the child, "never missed a visit"].) Nor did he appear at any subsequent proceedings, submit to DNA testing that may have bolstered his rights regarding J.B., respond to DCFS efforts to contact him, or cooperate with the department to transfer custody of the child safely.

We acknowledge, as have other courts, that J.B.'s age and her detention from A.N. may have limited his ability to establish a parental relationship with her. (See *In re D.M.* (2012) 210 Cal.App.4th at p. 554.) But presumed father status is not based on the good intentions or desires of the would-be parent; it is based on a parental connection that it would be detrimental to the child to disrupt. (See *ibid.* [man not presumed father of newborn infant even though he "ha[d] done all he c[ould] under the circumstances to assert a right to parent" and receive child into his home, including seeking visitation right and visiting consistently].) Thus, even *if* A.N. " 'ha[d] done all of the things that a biological father under the circumstances might do to develop a bond in a relationship with this child' "—a conclusion which the record before us does not support—this still would not be sufficient to establish presumed father status, absent "an existing familial relationship with the child." (*Id.* at pp. 548 & 554.) Even "[a] biological father is not entitled to [presumed father status] merely because he wants to establish a personal relationship with his child," and "an unmarried man who is not biologically related to the child is not entitled to custody or to reunification services merely because he wants to be the parent." (*Id.* at p. 554.) Thus, although it may be laudable that "[A.N.] stepped forward," and made some effort to be a parent

to J.B., this is only relevant to the extent it created a parental bond with J.B.

In sum, the purpose of presumed father status as a basis for granting a man additional rights in dependency proceedings is to protect a parental relationship from which the child has previously benefited. Because the record does not contain substantial evidence of such a relationship between J.B. and A.N., it does not support the court's finding of presumed father status.

Of course, this does not end the inquiry into A.N.'s possible role in J.B.'s life. Both A.N. and the mother indicated they believed A.N. might be J.B.'s natural father, and it appears that the court-ordered paternity testing was never completed. Should A.N. submit to such testing, and should it reveal that he is J.B.'s biological father, he will have continuing rights in the dependency proceedings regarding the child, and may work to have a role in her life.

## DISPOSITION

The court's order is reversed to the extent it found A.N. to be J.B.'s presumed father.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.